

Atty. Docket 24347-051 US  
USSN 09/845,016

**Section 3. Remarks and Response to Rejection:**

**REMARKS**

Reexamination and reconsideration of this Application is respectfully requested in view of:

- the Petition for Unintentionally Delayed Claim of CIP Status under Rule 78(a)(2) filed of even date herewith, a copy of which is attached hereto;
- the new (Supplemental) Declaration and the amended Cross-Reference to the parent application filed May 9, 2003; and
- these Remarks.

The new Declaration claiming benefit of the parent filing date under 35 USC 120 and the amendment to add the Cross-Reference section to page 1 to the Specification was entered by the Office, as no objection is made thereto in the Office Action of July 14, 2003.

The only rejection is based on the claim for priority under 35 USC 120 being belated, as not having been properly designated as a CIP until May 9, 2003. Please note that as of its filing date of April 27, 2001, the original application referred to and incorporated by reference the prior parent application SN 09/325,242 filed June 3, 1999.

The status of claims in this case remains the same as in the prior response in this case of May 9, 2003. Since the claims status remains the same, the detailed discussion of the claim amendments set forth in the October 15, 2002 and November 4, 2002 responses in this case will not be repeated in order to conserve time and space.

The Parent Application SN 09/325,242 was filed on June 3, 1999 in the name of Dr. Ralf Seip and Russell C. Watts as inventors. This application includes Dr. Seip as a common inventor, as required by Rule 78(a)(1), and adds Jacques M. Dulin as a co-inventor. The parent application issued on November 6, 2001 as US Patent 6,314,380. Since this application was filed on April 27, 2001, there is copendency of 6 ½ months. Thus, the conditions of Rule 78(a)(2), and MPEP 201.08 and 201.11, have been satisfied.

The attached Petition avers that the entire delay between the date the claim was due under paragraph (a)(2)(ii) of Rule 78 (August 27, 2001) and the date the claim was filed (May 9, 2003) was unintentional. The Petition fee of \$1300 accompanies the Petition (charge authorization to Deposit Account). Accordingly, it is thought that the Petition should be granted.

**Response to Section 103 Rejection:**

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All the presently pending claims were rejected as an obvious combination of Liu 6,263,272 in view of Seip et al 6,314,380 under 35 USC §103. Assuming grant of the Petition to accept the unintentionally delayed claim of priority as a CIP of the Seip patent 6,314,380, this rejection is inappropriate and should be withdrawn.

Indeed, the Final Rejection on page 2, Section 1 of the Detailed Action, states in pertinent part "...the conversion of the present application into a CPI [sic: CIP] of the Seip patent [6,314,380] could have overcome the rejection, [but] the submission of the Supplement[al] Declaration and the CIP claim were not timely filed." The Petition resolves the sole remaining issue to allowance of this case.

Applicants have converted this case to a C-I-P application under Rules 53(b) and 78, pursuant to 35 USC §120 and MPEP §201.08. Applicants have heretofore added on May 9, 2003 the appropriate "Cross-Reference to Related Case:" to Page 1 of the Specification. Note that is consistent with the incorporation by reference of that prior-filed Seip et al. Application in this case from its inception, *inter alia*, at page 6, lines 24 – 26.

Applicants have in the prior Response filed October 15, 2002 shown clearly that Liu does not teach or suggest the claimed combination or method. That is conceded in the Final Rejection, by repeating the rejection of the Second, non-final Office Action of February 14, 2003. Thus, the Final Rejection still looks to the Seip et al '380 patent for a teaching of use of an ultrasound sensor to measure temperature. In view of the fact that this case is a C-I-P of that Seip et al Application, the Seip patent is not a reference.

Accordingly, the combination rejection falls and should be withdrawn, not only because Liu does not teach or suggest the claimed method and apparatus systems, but also because Seip et al is not available to cure the defects in Liu. In addition, even if Seip et al were available, there is nothing in either the Liu reference or Seip (not a reference) to suggest the combination, as set forth in detail in the Response of May 9, 2003, and in the prior Responses filed October 15, 2002 and November 4, 2002.

### CONCLUSION

Grant of the Petition is respectfully urged. Applicants have carefully reviewed the Final Rejection and responded fully to all aspects thereof, including filing of even date herewith a Petition to accept the unintentionally belated conversion of this Application to a C-I-P case. It is clear that the Liu reference does not teach or suggest the claimed inventions, and Seip is not a reference.

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Favorable action of allowance of all claims present in the case is respectfully urged.

The Examiner is requested to contact undersigned counsel at the number indicated to resolve any issues relating to this Response.

Respectfully submitted,  
**Jacques M. Dulin**  
**Ralf Seip**

Date: September 26, 2003

by:

  
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encl: Copy of Petition  
Response filed by Fax

**End of Section 3, Remarks.**  
**End of Response to Final Rejection**